United States Court of Appeals

for the Second Circuit

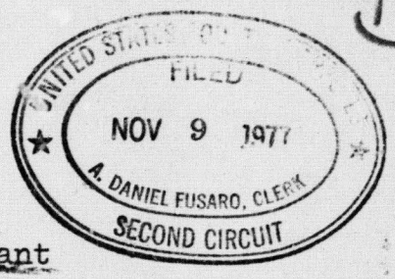
APPELLANT'S BRIEF

77-2114

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

DOCKET NO. 77 - 2114



B

VASILIOS GIAMBANIDIS,
Appellant

vs

UNITED STATES OF AMERICA,
Appellee

Appeal From The Order Of The Lower Court Dismissing The Appellant's 2255 Motion To Vacate The Sentence Docket Numbers, Civ. No. 2555, 77 Cr. No. 74-217, 74-337 & 73-372

BRIEF and Appendix OF THE APPELLANT

By,

Vasilios Giambanidis
P.O. Box 1000
Lewisburg, Pa. 17837

CONTENTS

	Page
Jurisdiction Below	i
Statement Of The Case	1
Argument	1
WHETHER THE SENTENCING COURT CONSIDERED THE YOUNG ADULT STATUS OF THE DEFENDANT AT THE DATE OF SENTENCING ?	2
Conclusion	4
Certificate Of Service	End

AUTHORITIES

United States v Wilson, 450 F. 2d 495(4 cir 71)	4
Evans v United States, No. _____ 4 Cir. Decided Nov./Dec. 1976 Remanded To The Honorable Judge Northrop, Baltimore, Maryland.	4

STATUTES

Title 18, U.S.C. Section 4209	1 - 4
Youth Corrections Act, P.L. 85-752	1 - 4
Congressional Record, S.R. No. 1180, 81st Congress 1st Session 1-91949	3

JURISDICTION

Jusisdiction in the lower court was grounded under Title 28, U.S.C. 2255 , The jurisdiction of this Court is grounded under 28 U.S.C. Section 2253, Appeal.

STATEMENT OF THE CASE

The appellant, on March 25, 1974, entered a plea of guilty before the Honorable Judge Bauman, to Cr. No. 74-217 (U.S.D.C.S.N.Y.) and agreed under Rule 20 (F.R.Cr.P.) to plead guilty to indictments 74-372 (E.D. of N.Y.) and 74-337 (New Jersey) after the apropriate transfer to the court below.

On April 15, 1974, the appellant appeared for sentencing on Cr. No. 74-217, and at that time entered a guilty plea to Cr. No.s 74-372 & 74-337. The court on both dates interrogated the appellant under Rule 11, advising him of his rights, etc. with the appellant acknowledging & admitting to the acts pleaded, with no plea barbaring or promises by the prosecution.

The court imposed a series of 15 year sentences, per each count of each indictment pleaded to. It may be summarized, for the purpose of this action, the appellant pled guilty to 5 bank-robberies, receiving 5 fifteen year concurrent sentences.

A R G U M E N T

Appellant, at the date of sentencing, was eligible and in need of treatment, and the benefits thereof, under the sentencing guidlines of the Youth Corrections Act for "Young Adult Offenders" (18 U.S.C. 4209) applicable to youthfull offenders who have not attained their 26th birthday. The sentencing court failed to recognize, or at the very least perform an excersise of discretion, that the appellant would not benefit from treatment under the Act, as appellant was 23 years old when sentenced.

It is not contended that the sentencing court must make a "no benefit" finding on the record, nor is it contended that appellant was "absolutely" entitled to be sentenced under the "Young Adult Offender" section of the act. It is contended the sentencing court must perform an exercise of discretion in recognizing the availability of the Act in formulating the sentence and consider the rehabilitation of the defendant in the totality of factors when imposing the sentence.

WHETHER THE SENTENCING COURT CONSIDERED THE YOUNG ADULT OFFENDER STATUS OF THE DEFENDANT AT THE DATE OF SENTENCING ?

In the instant case the Court, from the face of the record, failed to recognize the young adult offender status of the defend--ant, in lieu of the fact that defense counsel called to the Court's attention the youthfull status of the defendant:

Defense Counsel: Your Honor, Mr. Giambanidis is 23 years old. He has in effect pleaded guilty to a bank rob--bery, roberies. I believe he committed a total of bank robberies. He is originally from Greece He has been in the U.S. approximately 3 years. <u>His education is very limited</u>. He worked from ages 15 to 19 as a merchant seaman. He has no father. His mother lives in Greece. <u>This is</u> the first criminal conviction that I am aware of.

Defense counsel further informed the court, the marital status of the defendant, his fear of retaliation from codefendants, his willingness to plead guilty, and the defendant's recognition of his errors and open display for rehabilitative treatment.

The Defendant: Yes, I realize the crime was very bad and I feel sorry. I hope some day when I come out to prove I can rehabilitate myself. I feel sorry for what I did.

Thus the court[1/] was informed of the defendant's first offen--der status, his young adult status, his lack of education ala semi-illiteracy, his plea for rehabilatative treatment yet failed to consider sentencing under the Young Adult Offender Act.

This is contrary to the intent of congress as noted in the Act's debates:

> "Reliable statistics demonstrate, beyond possible doubt, that the period of life between 16 and 23 years of age is the focal source of crime. It is during that period that the hab--itual criminals are spaned."
> (S.R.No. 1180. 81 Congress, 1st Session 1-91949)

The defendant had, one month prior reached his 23 birthday & and the offenses pleaded to were committed during his 21 & 22 years, was the youngest of the 3 defendants yet incurred the harshest of the sentences. As noted codefendant, Khrisdodoulou, the oldest and most mature received concurrent 7 year sentences, from another court.

Obviously the Court, the U.S. Attorney and defense counsel all failed to recognize the defendant's young adult offender status. This of course is not chargeable to the defendant and absent the

1/ Unfortunately, since the date of sentencing but prior to the 2255 motion below the Honorable Judge Bauman, who sentenced the defendant, has passed on. Thus the court below, who reviewed this action, did not have the sentencing court's notes and abser clairvoyant powers could not have, in all earnesty, properly adjuudacated this issue.

the sentencing court's notes, etc. the appellant is entitled to be resentenced with factual considerations under the Young Adult Offender Act. See United States v Wilson, 450 F. 2d 495(4 cir 1971) Please note the Court's plethology at f.n. 2, in Wilson citing the "courts a system of analysis, treatment, and release that will cure rather than accentuate the anti-social tendencies that have led to the commission of the crime" further noting the 3 available "special benefits" to youthful offenders. 2/

In essence rehabilatation is of the primary concern when sentencing youthful offenders rather than punitive punishment, which is where the defendant is being housed ala the U.S. Prison in Lewisburg, Pa. with its noteriety or violence.

C O N C L U S I O N

Accordingly, absent the sentencing court's notes, and the face of the record below failing to demonstrate the appellant at the date of sentencing received consideration under the Youhg Adult Offender Act, this action ought to be remanded and the appellant ought to be given the opportunity to be "considered for sentencing" thru a hearing, under the Young Adult Offender Act, Title 18, U. S.C. Section 4209.

Vasilios
Vasilios Giambanidis

2/ Also see, Kenzell Evans v United States, No. _____, an action sub juice to the instant matter, where the appellate court (4 Cir Nov./Dec. 1976) reversed the lower courts rejection of a similar claim directing the lower court to perform an exercise of discretion as the record was absent any consideration of the def--endant's young adult status. Judge Northrop upon remand vacated a life sentence imposing a 35 yr. sentence for kidnapping.

CERTIFICATE OF SERVICE

The undersugned, Vasilious Giambanidis, hereby certifies that on this 6th day of November, 1977, he forwarded, via the United States mails, 8 copies of this appeal brief to the Clerk Of Courts, U.S. Appellate Courthouse/Second Circuit at Foley Square, New York, N.Y. and a copy to the U.S. Attorney's Office at the same address.

Vasilios Giambanidis

Vasilios Giambanidis
P.O. Box 1000
Lewisburg, Pa. 17837

MEMO. ENDORSED

JUDGE DUFFY

UNITED STATES DISTRICT COURT
[redacted] DISTRICT OF NEW YORK
SOUTHERN

UNITED STATES OF AMERICA,

vs.

VASILIOS GIAMBANIDIS,
Defendant

Case No. 74 Cr 217
(Clerk to supply)

Motion under 28 U.S.C. §2255 by Person in Federal Custody attacking Sentence

INSTRUCTIONS—READ CAREFULLY

To be considered by the District Court, the motion must be in writing *(legibly handwritten or typewritten)*, signed by the person in custody and [redacted]. Answers to each applicable question must be concise. If the space is too small for the answer to a particular question, finish it on the reverse side of the page or insert an additional blank page, making clear to which question the continued answer refers.

Every motion under §2255 of Title 28, United States Code, must be ATTESTED UNDER PENALTY OF PERJURY. [redacted] to [redacted]. A false statement of a material fact in it may be made the basis of prosecution and conviction for perjury. Take care to make the answers true and correct.

If the motion is made *in forma pauperis*, it shall include an ATTESTATION [redacted] *(attached at the back of the form)* setting forth information that will establish whether petitioner is unable to pay the fees and costs of the 2255 proceedings.

When the motion is completed, *the original and two copies* shall be mailed to the Clerk of the District Court for the SOUTHERN District of New York.

1. Place of detention United States Penitentiary, Lewisburg, Pa. 17837

2. Name and location of court which, and name of judge who, imposed sentence

U.S.D.C. for Southern, New York The Honorable Judge Bauman

So ordered

Kevin Thomas Duffy
USDJ

June 15 1977
New York, N.Y.

U.S. DISTRICT COURT
FILED
JUN 15 1977
S. D. OF N. Y.

MICROFILM
JUN 15 1977